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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of James Hugh McLaughlin) Group Art Unit
Serial No.: 09/964,143) 1617
Filed: September 25, 2001) Examiner
For: Emollient Skin Conditioning Cream and Method) Wang, Shengjun
May 19, 2006

Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Filing of Reply To The Examiner's Answer

Dear Sir:

Please find enclosed three (3) copies of Appellant's Reply to The Examiner's Answer in the above-identified patent application. This Reply To Examiner's is timely because the date the Examiner's Answer was mailed was April 19, 2006, and period set for reply is one month from that date. This reply is timely because is being mailed Certified Mail RRR on May 19, 2006.

Please note that a Request For Admissions is attached to the Reply To The Examiner's Answer. The Examiner and her supervisor must answer said Request For Admissions within thirty (30) days of receipt of same according the U.S. District Court rules. If their answer is not timely, the matters set forth therein are deemed admitted. The Board of Appeal members may attach their answers to their written decision herein with their names printed below their signature to said request.

Further I renew my request for statement of correct amount of fees payable in connection with the appeal herein. The request was reiterated in second sentence of the third paragraph of my November 12, 2005, letter, copy enclosed. If I do not receive an answer in thirty (30) days, I will complain by letter to the Commissioner of Patents and Trademarks with the copies of my letter to my Congressman and my Senators. This is not a threat, this is a promise.

Respectfully submitted,

Richard N. Miller

Richard N. Miller

Reg. No. 22,977

Enc.: Three copies of a Reply Brief To Examiner's Answer

First page of my November 12, 2005, letter to Commissioner of Patents and Trademarks

I hereby certify that this paper and enclosed three copies of Reply To The Examiner's Answer is being deposited with U.S. Post Office with sufficient postage as certified mail RRR in an envelope addressed to Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on 19th of May 2006 by Richard N. Miller
Richard N. Miller



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of James Hugh McLaughlin)	Group Art Unit
		1617
Serial No.: 09/964,143)	
		Examiner
Filed: September 25, 2001)	Wang, Shengjun
For: Emollient Skin Conditioning Cream and Method)	

November 12, 2005

Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313

Filing of The Brief on Appeal Under 37 C.F.R. 41.37(c)

Dear Sir:

In reply to the Office Action mailed on October 14, 2005, Paper No. ?, please find three (3) of Appellant's Brief on Appeal in the above-identified patent application. The Brief of Appeal mailed on November 20, 2005, has been amended to hopefully comply with 37 C.F.R. 41.37(c) that was adopted on September 13, 2004, and unclear in the opinion of Appellant's attorney. More particularly, the original Brief of Appeal has been amended to add the following sections: (v) Summary of claimed subject matter; (vi) Grounds of rejection to be reviewed on appeal; (viii) Claims appendix; (ix) Evidence appendix; and (x) Related proceedings appendix.

The filing of foregoing Brief on Appeal is timely because the Office Action that required the amended brief was purportedly mailed October 14, 2005, and set the period for reply to one month from said date, i.e., November 14, 2005. For the record, Appellant's attorney reported that said Office Action undated and the copy of first page said Office Action is attached hereto. For record Appellant's attorney notified Mr. Craig Feinberg of that fact on October 24, 2005, by telefax and a copy of said telefax is attached.

N.B. { The foregoing telefax to Mr. Feinberg pointed out an error on the communication mailed on August 16, 2005, and Mr. Feinberg said the error would be corrected, but as of this date nothing has been done. Further, my letter dated November 20, 2004, (copy attached) accompanying Appellant's original Brief of Appeal requested a statement of correct amount of fees payable in connection with appeal herein and the request remains unanswered. The performance of United States Patent herein leaves a lot to be desired in the humble opinion of Appellant's attorney. Accordingly, Appellant's attorney requests a copy of this letter be forwarded to compliance office or quality control office for reply and with copy of forwarding communication to said office sent Appellant's attorney.

In closing, I apologize in advance for extra work my foregoing request causes, but in my humble opinion the performance of Patent Office in connection with the subject application is substandard and not in accord with the applicable law and should be corrected.

Respectfully submitted,

Richard N. Miller

Richard N. Miller
Reg. No. 22,977

Enc. Appeal Brief (3 copies)

Undated Communication from Patent Office

Telefax dated October 24, 2005

Letter dated November 20, 2004

I hereby certify that this paper and enclosed Brief on Appeal is are deposited with the United States Post Office with sufficient postage as certified mail in an envelope addressed to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on 12th day of November, 2005, by Richard N. Miller

Richard N. Miller



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of James Hugh McLaughlin)	Group Art Unit
Serial No.: 09/964,143)	1617
Filed: September 25, 2001)	Examiner
)	Wang, Shengun
For: Emollient Skin Conditioning Cream and Method)	

November 20, 2004

Commissioner of Patents and Trademarks
P. O. Box 1450
Alexandria, VA 22313-1450

Filing of The Brief on Appeal Under 37 CFR 1.192

Dear Sir:

Please find enclosed three (3) copies of Appellant's Brief on Appeal in the above-identified patent application together with the check in the amount of \$340.00 in payment of the fee for filing said Brief.

The filing of the brief is timely because the Notice of Appeal was filed on September 21, 2004, and time to respond to the Final Rejection herein was extended to November 23, 2004.

N.B. { Appellant renews the request for a statement by U.S. Patent and Trademark Office of correct amount of fees payable in connection with Appellant's filing this appeal. The original request was made in Notice of Appeal herein and a copy is enclosed for your ready reference. **The reply of some responsible person is requested again.**

Respectfully submitted,

Richard N. Miller

Richard N. Miller
Reg. No. 22,977

Enc. Notice of Appeal

I hereby certify that this paper along with enclosed check and three copies of the enclosed Brief on Appeal are being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to the Commissioner Of Patent, P.O. Box 1450, Alexandria, VA. 22313-1450, on the 22 day of November, 2004, by Richard N. Miller.

Richard N. Miller



**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/964,143
Filing Date: September 25, 2001
Appellants: McLAUGHLIN, JAMES HUGH

Richard N. Miller
For Appellant

REPLY TO EXAMINER'S ANSWER

This is in response to the Examiner Answer to Appellant's Brief On Appeal that was mailed on April 19, 2006.

(10) Response to Argument (Page 3 of Examiner's Answer)

The Examiner states in subparagraph 1 "Claims 3, 6, 33 and 40 – 43 are rejected under 35 U.S.C. 103 as unpatentable over Kellner in view of Barker et al." stating as follows:

"Kellner teaches that up to 20% of primary gelling agent may be used, wherein the preferred primary gelling agent is salt of fatty acid, particularly, calcium stearate (see col. 2, lines 24 – 65)." It is Appellant's position that said statement is not true and a person of ordinary skill in relevant art would know it was untrue for reasons that follow:

- A. Col. 2, lines 24 – 26, of Kellner state "The cosmetic stick compositions of the invention comprise 0.1-20%...of a primary gelling agent" and lines 61-63 state "Preferably the gelling agent...sodium stearate."
- B. Col. 2, lines 57 – 60, of Kellner state "Examples of gelling agents which may be used ...magnesium, calcium salts of stearic...acids...."
- C. Because the passage at col. 2, lines 24-65, does not identify the medium that is gelled, one skilled in art would have to refer to 9 examples to note in Example 1 that the medium gelled is sequence 6, i.e., water, and the gelling agent is sequence 8, i.e., sodium stearate. Further, one skilled in art would note that in the remaining eight examples the medium gelled was water and gelling agent was sodium stearate. Further, water content in the nine examples ranged from 37.7%-50.4% by weight.
- D. Since one skilled in the relevant art knows that calcium stearate and magnesium stearate according to CRC Handbook of Chemistry and Physics and Hackh's Chemical Dictionary are insoluble in water, a person of ordinary skill in art knows that said compounds cannot gel water and, therefore, said compounds are

not equivalents of sodium stearate as gelling agents. (For the record, Merriam

Webster Collegiate Dictionary, Eleventh Edition, defines “equivalent as follows:

“corresponding or virtually identical esp. in effect and function.”)

The foregoing detailed analysis of disclosure of Kellner proves that a person of ordinary skill in relevant art would know that Kellner’s statement that sodium stearate and calcium stearate or magnesium stearate are equivalents as gelling agents for water in Kellner’s disclosed compositions is patently false and not true. Therefore, one skilled in relevant art would not be led to include calcium stearate or magnesium stearate for any purpose in the compositions described by Kellner et al.

Furthermore, if one skilled in art had any doubts that sodium stearate and calcium stearate were equivalent as gelling agents, he would substitute calcium stearate for sodium stearate as gelling agent in Example 1 of Kellner et al. and discover that the mixture of calcium stearate and water would not produce a gel and a Kellner’s composition in form of solid stick could not be obtained. At that point, if one skilled in art still was not convinced that sodium stearate and calcium stearate were not equivalents as gelling agents, he would note that other eight examples contained 38% - 50% water and gelling agent was sodium stearate. Then he would substitute calcium stearate for sodium stearate in the composition of one of other examples and note that a composition in form of solid stick was not obtained. As a result of these experiments, **one skilled in relevant art would know Kellner’s statement that sodium stearate and calcium stearate were equivalents as gelling agents in Kellner’s compositions was not true and would not use calcium stearate for any purpose in the compositions of Kellner et al..**

Because the foregoing analysis shows calcium stearate and sodium stearate are not equivalents as gelling agents in Kellner, **one skilled in art has no reason to include calcium stearate or magnesium stearate in any of compositions of Kellner.** Thus, a person skilled in relevant art would conclude the following quotation from the Examiner's Answer was contrary to the known facts and is based upon "wishful thinking" of person who is not skilled in art, e.g., the Examiner herein in Appellant's attorney's opinion:

"The employment of the particular ingredients such as corn starch or **calcium stearate** is obvious since they are known to be useful in the composition. The employment of such components in the composition is seen to be a selection amongst equally suitable material and as such obvious...(at 1388)." (Page 4, last paragraph, lines 8-11)

The foregoing quotation from Examiner's Answer, i.e., Kellner et al assertion that sodium stearate and calcium stearate equivalents as gelling agents for water, is not true because a person of ordinary skill in the art knows that calcium stearate is insoluble in water and cannot gel water. Thus, if calcium stearate cannot serve as gelling agent for water, there no reason to substitute calcium stearate for sodium stearate water gelling agent and no reason to include it in the Kellner et al compositions for any purpose. The foregoing analysis of Kellner et al. proves that calcium stearate is not useful as a gelling agent in any compositions of Kellner's examples so the foregoing quotation of the examiner, i.e., "is seen to be selection amongst equally suitable material," is not true and contrary to known facts.

For further proof that sodium stearate and calcium stearate are not equivalents as gelling agents in Kellner's exemplified compositions, the members of Board of Appeal are referred to Exhibits A – D, **particularity Exhibits B and D**, attached to Appellant's Appeal Brief Under 37 CFR 1.192.

Lastly, it is noted that the examiner agrees with Appellant's conclusion that Kellner's teaching that sodium stearate and calcium stearate are not equivalent as gelling agents in Kellner's composition of Example 1 containing 41% by weight of the water stating as follows:

"The examiner does not dispute that sodium stearate and calcium stearate are not equivalent as gelling agents in composition comprising 41% of water as as shown in the 1.132 Affidavit." (Next to last sentence in paragraph of Examiner's bridging pages 7 and 8.)

For the record, the 1.132 Affidavit deals with a reproduction of Kellner's composition of Example 1 with sodium stearate gelling agent and calcium stearate gelling agent substituted for said sodium stearate. Said affidavit verifies Appellant's contention that the said gelling agents are not equivalents in Kellner's composition of Example 1, thereby refuting Kellner teaching of equivalence. **Further, the foregoing quotation verifies that the Examiner agrees with Appellant's conclusion that sodium stearate and calcium stearate are not equivalents as gelling agents and, therefore, there is no reason to substitute calcium stearate for sodium stearate in Kellner et al's composition of Example 1 because a composition in stick form would never result.**

Furthermore, because the other eight Examples of Kellner contain similar amounts of water, e.g., 38% - 50% by weight of water, and sodium stearate as the gelling agent, they are further proof that Kellner's teaching that sodium stearate and calcium stearate are equivalents as gelling agents in Kellner's composition is untrue. **Thus, this analysis of Kellner proves that one skilled in art is not taught to include calcium stearate in compositions of Kellner for any purpose.** Therefore, no combination of the cited references of record

teaches or suggests Appellant's novel and useful compositions containing the claimed proportions of emollient, surfactant, a mixture of starch and specific particulate material and 0-10% by weight of water thickened with calcium or magnesium C14 – C18 monocarboxylic acid salt.

Furthermore, based upon 20/20 hindsight, the issued Kellner et al patent is invalid for failure to comply with 35 U.S.C. 112. More particularly, the nine examples of Kellner et al. all contain butylene glycol, seemingly an essential ingredient, that nowhere is discussed in specification. Therefore, in first Office Action the application should have been rejected for failure to comply with 35 U.S.C. 112. **It is my opinion, that the Patent Office along with primary examiner and assistant examiner whose names are listed column 2 on first page of said patent are guilty of gross negligence per se in their examination of the application of Kellner et al. that issued U.S. 6,042,815, the primary reference in rejection herein.** It is noted that Examiner's Answer is silent with respect to an apparent essential ingredient, i.e., butylene glycol, that is present in every example of Kellner et al. patent, but is not discussed elsewhere in the specification of Kellner et al. or present in the claims of Kellner et al. **(It is Appellant's attorney's opinion that this fact with coupled shortcomings of Kellner et al. discussed above is further evidence that Patent Office was negligent in examination and prosecution of Kellner et al. patent application.)** **Appellant specifically requests The Board of Appeal in it's decision in this appeal specifically address this omission and consequences of same.** Conceivably, butylene glycol is an essential ingredient in the compositions of Kellner et al. that is missing from the claims and possibly another reason that patent to Kellner et al. is invalid. Because Appellant's compositions do not contain butylene

glycol, this is further difference from the primary Kellner reference. Also, the Examiner sets forth no authority for the statement "The solid disclosed by Kellner et al. is actually a gel, which would meet the limitation of 'extrudable paste.' The plain meaning of "A solid gel" is a solid, not an extrudable paste, and Kellner et al. describes the compositions of his Examples 1 and 2A and 2B as being a stick, not a gel. (Col. 22, line 67 and col. 23, line 33).

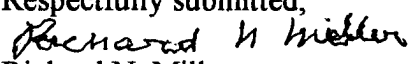
In summary, the detailed analysis of a primary reference to Kellner et al. discloses that Kellner's teaching that sodium stearate, calcium stearate and magnesium stearate are equivalent gelling agents for water in Kellner's disclosed composition is not true. The reason is that calcium stearate and magnesium stearate are insoluble in water and cannot gel water; whereas, sodium stearate is water soluble and effective to gel the continuous water phase. (In the Appellant's attorney's opinion, the failure of Patent Office Examiners who allowed the Kellner et al. as well as the examiner herein to recognize the foregoing differences between sodium stearate and calcium stearate borders on the technical incompetence.) Thus, there is no reason for one skilled in art to include calcium stearate or magnesium stearate in the solid compositions of Kellner et al. and the Kellner et al. compositions without calcium or magnesium stearate do not make obvious Appellant's inventive compositions containing one of said water insoluble stearates in combination with an emollient, a surfactant, a mixture of starch and a specific other particulate ingredient and 0%-10% by weight of water.

Accordingly, Appellant's claimed inventive compositions are new, useful and unobvious from any fair combination of cited references. Further, the claimed compositions

are in accord with 35 U.S.C. 101 – 103 and allowance of the claimed invention as a patent is respectfully solicited.

Please note five (5) copies of a Request For Admissions pursuant to U.S. District Court L.Civ.R. 36.1 is attached hereto. **Appellant specifically requests that said Request For Admissions be completed by Primary Examiner, Shengjun Wang, and her supervisor, Sreeni Padmanabhan, within the thirty (30) days of their receipt thereof and date of their receipt be set forth on their signed copy of same and said signed copies be attached to the acknowledgment of receipt by the Examiner of this Reply To Examiner's Answer herein. The three members of Board of Appeals can attach copies of same to the written decision in this appeal.** These papers are very important should a further appeal of this rejection be necessary.

For the record, Appellant's attorney will not request oral hearing. If the decision of Board of Patent Appeals herein affirms the rejection of Examiner, Appellant's attorney will recommend filing civil action under 35 U.S.C. 145 and 146 to get justice. Appellant's attorney is educated as a chemical engineer, has practiced over 35 years as a patent attorney and has never experienced such a technically unjustified rejection based upon patent issued does not comply 35 U.S.C. 112 as in the instant application. **Appellant's attorney requests the decision herein specifically address this shortcoming of the rejection herein, i.e., a rejection on a patent that is seemingly is invalid for failure to comply with 35 U.S.C 112.**

Respectfully submitted,

Richard N. Miller
Registration No. 22,977

Enc. Five copies of Request For Admissions

BEFORE THE BOARD OF PATENT OF PATENT APPEALS AND PATENT
INTERFERENCES

Application No. 09/964,143

Filing Date: September 25, 2001

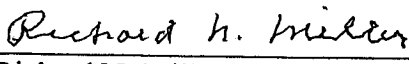
Appellants: MCLAUGHIN, JAMES HUGH

REQUEST FOR ADMISSIONS

TO: Shengjun Wang

Pursuant to U.S. District Court Civ. 36.1 Rule entitled REQUESTS FOR ADMISSION, Appellant requests that you admit the truth of the following. Please note that, in accordance with that Rule, unless you provide written response with thirty (30) days, the matters set forth shall deemed to be admitted.

1. The primary reference U.S. Patent 6,042,815 to Kellner et al. teaches at col. 2, lines 24 – 63, more particularly at lines 57 – 63, that sodium stearate and calcium stearate and magnesium stearate are primary gelling agents for water. True _____ Not true _____
2. Kellner et al. expressly teaches at col. 2, lines 24 – 63, that the only use for calcium stearate and magnesium stearate in Kellner et al.'s compositions is as gelling agent for water. True _____ Not true _____
3. Sodium stearate is water soluble and can produce a gel when mixed with water. True _____ Not true _____
4. Calcium stearate is water insoluble and cannot produce a gel when mixed with water. True _____ Not true _____
5. Magnesium stearate is water insoluble and cannot produce a gel when mixed with water. True _____ Not true _____
6. Kellner et al.'s teaching that calcium stearate and magnesium stearate are equivalents of sodium stearate for gelling water is not true. True _____ Not true _____
7. A person of ordinary skill in the cosmetic composition art knows that the calcium stearate and magnesium stearate are insoluble water and cannot produce a gel when mixed water and are not equivalents for sodium stearate for producing a gel when mixed with water. True _____ Not true _____



Richard N. Miller
Registration No. 22,977

Signed on the date

Shengjun Wang

BEFORE THE BOARD OF PATENT OF PATENT APPEALS AND PATENT
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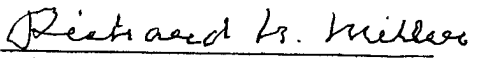
Application No. 09/964,143
Filing Date: September 25, 2001
Appellants: MCLAUGHIN, JAMES HUGH

REQUEST FOR ADMISSIONS

TO: Sreeni Padmanabhan

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Richard N. Miller
Registration No. 22,977

Signed on the date _____

Sreeni Padmanabhan

BEFORE THE BOARD OF PATENT OF PATENT APPEALS AND PATENT
INTERFERENCES

Application No. 09/964,143

Filing Date: September 25, 2001

Appellants: MCLAUGHIN, JAMES HUGH

REQUEST FOR ADMISSIONS

TO: A Member Of The Board Of Appeals

Pursuant to U.S. District Court Civ. 36.1 Rule entitled REQUESTS FOR ADMISSION, Appellant requests that you admit the truth of the following. Please note that, in accordance with that Rule, unless you provide written response with thirty (30) days, the matters set forth shall deemed to be admitted.

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Richard N. Miller

Richard N. Miller

Registration No. 22,977

Signed on the date _____

A Member of Board Of Appeals

BEFORE THE BOARD OF PATENT OF PATENT APPEALS AND PATENT
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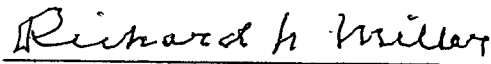
Appellants: MCLAUGHIN, JAMES HUGH

REQUEST FOR ADMISSIONS

TO: A Member Of The Board Of Appeals

Pursuant to U.S. District Court Civ. 36.1 Rule entitled REQUESTS FOR ADMISSION, Appellant requests that you admit the truth of the following. Please note that, in accordance with that Rule, unless you provide written response with thirty (30) days, the matters set forth shall deemed to be admitted.

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Richard N. Miller
Registration No. 22,977

Signed on the date

A Member of Board Of Appeals

BEFORE THE BOARD OF PATENT OF PATENT APPEALS AND PATENT
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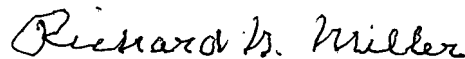
Appellants: MCLAUGHIN, JAMES HUGH

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6. Kellner et al.'s teaching that calcium stearate and magnesium stearate are equivalents of sodium stearate for gelling water is not true. True _____ Not true _____
7. A person of ordinary skill in the cosmetic composition art knows that the calcium stearate and magnesium stearate are insoluble water and cannot produce a gel when mixed water and are not equivalents for sodium stearate for producing a gel when mixed with water. True _____ Not true _____



Richard N. Miller

Registration No. 22,977

Signed on the date

A Member of Board Of Appeals